

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

-----  
ESTATE OF ROGER D. :  
OWENSBY JR., et al., :  
 :  
Plaintiffs, :  
vs. : Case No. 01-CV-769  
 : (Judge S. A. Spiegel)  
CITY OF CINCINNATI, :  
et al., :  
 :  
Defendants. :  
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Videotaped deposition of ROBERT BLAINE JORG, a  
defendant herein, called by the plaintiffs for  
cross-examination, pursuant to the Federal Rules of  
Civil Procedure, taken before me, Wendy Davies  
Welsh, a Registered Diplomate Reporter and Notary  
Public in and for the State of Ohio, at the offices  
of Helmer, Martins & Morgan Co. LPA, 1900 Fourth &  
Walnut Centre, 105 East Fourth Street, Cincinnati,  
Ohio, on Tuesday, October 14, 2003, at 10:12 a.m.

<p>Page 2</p> <p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 Paul B. Martins, Esq. 4 Don Stiens, Esq. 5 Helmer, Martins &amp; Morgan Co. LPA 6 Suite 1900, Fourth &amp; Walnut Centre 7 105 East Fourth Street 8 Cincinnati, Ohio 45202 9 Phone: (513) 421-2400</p> <p>10 John J. Helbling, Esq. 11 The Helbling Law Firm, L.L.C. 12 3672 Springdale Road 13 Cincinnati, Ohio 45251 14 Phone: (513) 923-9740</p> <p>15 On behalf of the Defendants City of Golf Manor, 16 Stephen Tilley, Roby Heiland and Chris 17 Campbell:</p> <p>18 Lynne Marie Longtin, Esq. 19 Rendigs, Fry, Kiely &amp; Dennis 20 900 Fourth &amp; Vine Tower 21 One West Fourth Street 22 Cincinnati, Ohio 45202-3688 23 Phone: (513) 381-9200</p> <p>24 On behalf of Defendants City of Cincinnati, Darren Sellers, Jason Hodge:</p> <p>25 Geri Hernandez Geiler, Esq. 26 Assistant City Solicitor 27 and 28 Julie F. Bissinger, Esq. 29 Chief Counsel 30 Department of Law 31 Room 214, City Hall 32 801 Plum Street 33 Cincinnati, Ohio 45202 34 Phone: (513) 352-3346</p>	<p>Page 4</p> <p>1 S T I P U L A T I O N S</p> <p>2 It is stipulated by and among counsel for the</p> <p>3 respective parties that the deposition of ROBERT</p> <p>4 BLAINE JORG, a defendant herein, called by the</p> <p>5 plaintiffs for cross-examination, pursuant to the</p> <p>6 Federal Rules of Civil Procedure, may be taken at</p> <p>7 this time by the notary; that said deposition may be</p> <p>8 reduced to writing in stenotype by the notary, whose</p> <p>9 notes may then be transcribed out of the presence of</p> <p>10 the witness; and that proof of the official</p> <p>11 character and qualifications of the notary is</p> <p>12 expressly waived.</p> <p>13 - - -</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>																																				
<p>Page 3</p> <p>1 APPEARANCES (Continued):</p> <p>2 On behalf of the Defendants Robert B. Jorg, 3 Patrick Caton, Jason Hodge, Victor Spellen and 4 Darren Sellers:</p> <p>5 Donald E. Hardin, Esq. 6 Hardin, Lefton, Lazarus &amp; Marks, LLC 7 915 Cincinnati Club Building 8 30 West Garfield Place 9 Cincinnati, Ohio 45202 10 Phone: (513) 721-7300</p> <p>11 Also present:</p> <p>12 Richard W. Grubb, Videographer</p> <p>13 Lisa Damstrom, Law Clerk</p> <p>14 Helmer, Martins &amp; Morgan Co., L.P.A.</p> <p>15 Wendy M. Weller, Paralegal</p> <p>16 Buckley King</p> <p>17 Mr. Roger Owensby</p> <p>18 Mrs. Brenda Owensby</p> <p>19 Mr. Shawn Owensby</p> <p>20 Patrick Edmund Caton</p> <p>21 Victor Spellen</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 5</p> <p>1 I N D E X</p> <p>2 Examination by: Page</p> <p>3 Mr. Martins . . . . . 6</p> <p>4 Ms. Longtin . . . . . 227</p> <p>5 - - -</p> <p>6 E X H I B I T S</p> <p>7</p> <table><tr><td>Plaintiffs' Exhibit 1</td><td>Page</td></tr><tr><td>Plaintiffs' Exhibit 2</td><td>18</td></tr><tr><td>Plaintiffs' Exhibit 3</td><td>25</td></tr><tr><td>Plaintiffs' Exhibit 4</td><td>48</td></tr><tr><td>Plaintiffs' Exhibit 5</td><td>48</td></tr><tr><td>Plaintiffs' Exhibit 6</td><td>51</td></tr><tr><td>Plaintiffs' Exhibit 7</td><td>58</td></tr><tr><td>Plaintiffs' Exhibit 8</td><td>72</td></tr><tr><td>Plaintiffs' Exhibit 9</td><td>86</td></tr><tr><td>Plaintiffs' Exhibit 10</td><td>107</td></tr><tr><td>Plaintiffs' Exhibit 11</td><td>132</td></tr><tr><td>Plaintiffs' Exhibit 12</td><td>161</td></tr><tr><td>Plaintiffs' Exhibit 13</td><td>165</td></tr><tr><td>Plaintiffs' Exhibit 14</td><td>178</td></tr><tr><td>Plaintiffs' Exhibit 15</td><td>199</td></tr><tr><td>Plaintiffs' Exhibit 16</td><td>201</td></tr><tr><td>Plaintiffs' Exhibit 17</td><td>206</td></tr><tr><td>Plaintiffs' Exhibit 18</td><td>212</td></tr></table> <p>17 - - -</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	Plaintiffs' Exhibit 1	Page	Plaintiffs' Exhibit 2	18	Plaintiffs' Exhibit 3	25	Plaintiffs' Exhibit 4	48	Plaintiffs' Exhibit 5	48	Plaintiffs' Exhibit 6	51	Plaintiffs' Exhibit 7	58	Plaintiffs' Exhibit 8	72	Plaintiffs' Exhibit 9	86	Plaintiffs' Exhibit 10	107	Plaintiffs' Exhibit 11	132	Plaintiffs' Exhibit 12	161	Plaintiffs' Exhibit 13	165	Plaintiffs' Exhibit 14	178	Plaintiffs' Exhibit 15	199	Plaintiffs' Exhibit 16	201	Plaintiffs' Exhibit 17	206	Plaintiffs' Exhibit 18	212
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1 assistance" call?  
2 A. Unfortunately, up until I actually heard  
3 someone play that particular tape, I don't have any  
4 recollection on my own of hearing anybody put out  
5 the assistance. However, I know it was done, if  
6 that makes --  
7 Q. Because of what you've seen after the  
8 fact?  
9 A. Right.  
10 Q. Okay.  
11 A. It's one of those things, when you're a  
12 police officer things happen so fast you have to pay  
13 attention to everything that's done. Pat and I,  
14 like I said, worked together for years, and I know  
15 the minute, the second someone breaks and runs it's  
16 advertised to the other officers in the area of  
17 what's going on. And it's a safety issue. So I  
18 know it was done. Do I remember seeing Pat grab his  
19 radio and say, hey, we're in a tussle with this guy?  
20 No, I do not.  
21 Q. But the -- as I'm understanding your  
22 testimony, the procedure is to do that as soon as  
23 someone breaks and runs?  
24 A. Yes. That's --

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1 Q. So am I correct in understanding that an  
2 officer, a Cincinnati police officer is instructed  
3 that whenever a suspect breaks and runs the officer  
4 is to transmit an officer needs assistance call?  
5 A. Well, it depends on the exact situation.  
6 Keep in mind the distance here is probably not  
7 greater than 10, 20 feet. He stutter steps. The  
8 distance of the gap was closed quickly. Reacting to  
9 what happens, we have many people that used to run  
10 from us for whatever reason, and if it's -- as soon  
11 as they break and run we can grab a coat, grab a  
12 hood and solve the situation. No need to put out an  
13 assistance run. If they break free of that grasp,  
14 it's a foot pursuit. If we need cars, we need cars.  
15 Whatever the situation may be.  
16 There are some times, now that I've told  
17 you the rules of how we react, there are some times  
18 I've been in knockdown dragout Macing fights and  
19 never had a chance to get to a radio to let anybody  
20 know I was involved.  
21 Q. Back in September or October did anyone  
22 put out an officer needs assistance call when that  
23 person ran away?  
24 A. I don't know. It's printed up over there.

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1 I don't know --  
2 Q. Yeah, I didn't see it there.  
3 A. I -- I think there was.  
4 Q. Do you have any recollection of that?  
5 A. I believe somebody said he was running,  
6 that they're in foot pursuit. Yep. Right here,  
7 4242, "we're in foot pursuit," and then they give  
8 the descriptions. Yeah, it was done.  
9 Q. Well, that's different. "We're in foot  
10 pursuit" is different than "officer needs  
11 assistance," isn't it?  
12 A. It can be.  
13 Q. Well, isn't it?  
14 A. Not necessarily.  
15 Q. If you -- if you hear someone saying, I'm  
16 in foot pursuit, do you drop everything and respond?  
17 A. It depends on where I'm at.  
18 Q. What do you mean?  
19 A. Well, if someone's in foot pursuit on the  
20 south side of the district and I'm up on the north  
21 end where all the railroad tracks are, there's no  
22 way I'm going to make it down there.  
23 Q. Okay.  
24 A. Even if it's an assistance run.

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1 Q. Well, And that's what I'm trying to  
2 understand. Is there a difference in how officers  
3 react when there is an officer needs assistance call  
4 as opposed to a report that a suspect is in -- or  
5 that the officer is in foot pursuit?  
6 A. Every individual officer has to gauge the  
7 risks of getting to a certain location versus the  
8 damaging or hurting of the public.  
9 Have I not gone to foot pursuits because  
10 they were way too far away? Yeah. Have I not gone  
11 to assistance runs because I knew I would never make  
12 it there? Yes. Have I been involved in assistance  
13 runs that have lasted for 30-plus minutes and we had  
14 every div-- district there? Yes.  
15 We have had -- we have had fights with  
16 people on the side of an interstate where cars from  
17 almost every jurisdiction of Hamilton County made it  
18 to because it went that long.  
19 Q. In that case --  
20 A. So in answer to your question, the  
21 individual officer has to gauge the risk versus the  
22 outcome and make an educated decision. I can't  
23 speak for what every officer does.  
24 Q. You mean a decision on whether to respond

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1 A. No. I went through what I'm going through  
2 right now and tried to give them case-by-case  
3 stories, trying to give them examples of what  
4 happened to me or what happened to other officers to  
5 let them know. And then we'll walk them through  
6 different situations and ask them, "When do you  
7 think you need to call?"

8 Other -- some officers have a higher skill  
9 level than others. Some officers are very good  
10 schmoothers, have a very good mouth and can calm a  
11 situation down no matter how bad it is. Other  
12 officers can't do that. Other officers rely on  
13 different things. I don't know.

14 Q. In this situation with Mr. Owensby did you  
15 think that there should have been put out an officer  
16 needs assistance call?

17 A. As soon as I wrapped him up and took him  
18 to the ground, yes.

19 Q. Why?

20 A. He was a lot stronger than I was.

21 Q. On what do you base the -- your statement  
22 that he was a lot stronger than you were?

23 A. Well, I'm trying to get his hand out from  
24 under his -- his stomach, under his chest, and I

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1 couldn't pull it out.

2 Q. Tell me this: Now, when you're -- when  
3 he's laying face down on the asphalt and you're off  
4 on top of him and to his left, are his arms  
5 underneath him?

6 A. Yes.

7 Q. Are they at his chest, are they at his  
8 stomach, are his hands down by his crotch underneath  
9 him?

10 A. I don't know. I can't see where his hands  
11 are at.

12 Q. Could you tell from the position of his  
13 elbows whether or not his arms were across his chest  
14 or whether they were lower down?

15 A. His elbow was slightly bent where -- and  
16 his -- he had, basically, an isosceles triangle  
17 formed. Where his hands were at, I do not know. I  
18 don't know if they were cupped. I don't know if  
19 they were holding. I don't know if they were open.  
20 I don't know what they were.

21 Q. Did Mr. Owensby say anything to you at  
22 this time?

23 A. I never heard him say a word.

24 Q. Was anybody else on top of Mr. Owensby

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1 other than the portion of your body that you've  
2 described?

3 A. At that particular point?

4 Q. Yes.

5 A. Or in general?

6 Q. No, at that point.

7 A. Once I got off to a side and I started  
8 fighting for his left hand, I believe that's when  
9 Officer Caton -- when I observed -- I don't know at  
10 what point he got there, but I did see Officer Caton  
11 at his -- the back portion of his body also.

12 Q. And he was to the back and to the right?

13 A. Yes.

14 Q. Where exactly on the body was Officer  
15 Caton at this point?

16 A. I believe he, in my best recollection, he  
17 was sitting either on the top part of his thigh or  
18 the top part of his buttocks with his legs slightly  
19 crossed, I think partially over one leg, I'm not  
20 real sure.

21 Q. Was anybody on the left leg of Mr.  
22 Owensby?

23 A. I don't believe so.

24 Q. Was Mr. Owensby kicking?

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1 A. I don't know.

2 Q. Did you ever see him kicking?

3 A. No.

4 Q. What do you recall Officer Caton doing?

5 A. He was mostly responsible for handcuffing.  
6 When I got Mr. Owensby's left arm out, I remember  
7 bringing it back. That's when I used my knee on his  
8 shoulder and I'm bringing his arm back to Pat to  
9 place the handcuffs on.

10 Q. Were you kneeling at this time?

11 A. Yes.

12 Q. So you had gotten up off of -- originally,  
13 when we talked you had your head into his shoulder.  
14 So you had pushed yourself up?

15 A. How -- so we don't get out of context  
16 here, how it went: After we're on the ground, we  
17 get rolled over, we're positioned differently. I'm  
18 trying to get my arm out from under his body.  
19 That's when I let go of his arm and I'm trying to  
20 get my arm out. As I'm coming out, I tried to grab  
21 his bicep and elbow and pull his arm out with me. I  
22 can't get it to come out.

23 That's when I wrap his head and perform  
24 the mandibular angle pressure point to try to gain

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1 compliance to overcome his strength by getting his  
2 arm out. Just so we don't lose sight of that part.  
3 At that point, as soon as I gave him the  
4 commands, it was either twice or three times, his  
5 arm and his elbow -- his elbow moves up, his wrist  
6 starts to come up, I trap his wrist, I let go of the  
7 head, I come up. I give the arm to Pat as the  
8 handcuffing process is going on.  
9 Q. When's the Macing?  
10 A. I believe right, maybe the second before  
11 his arm pops out or as it's popping out. Might have  
12 been maybe a second before.  
13 Q. Before the handcuffs are applied or after?  
14 A. Before.  
15 Q. At the time -- and -- and who applies the  
16 Mace?  
17 A. Officer Hunter.  
18 Q. Did -- was Officer Hunter ever -- any part  
19 of Officer Hunter's body in contact with Mr.  
20 Owensby?  
21 A. I don't know.  
22 Q. At this point in time that you've  
23 described, where you have Mr. Owensby's arm out  
24 and -- left arm out, and you're giving it to Officer

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1 Caton for handcuffing, Officer Sellers and Officer  
2 Hodge are present?  
3 A. I believe so.  
4 Q. Now, we don't --  
5 A. Yes, they were. Yes, they were.  
6 Q. I'm sorry?  
7 A. Yes, they were.  
8 Q. We know where Officer Sellers was. He was  
9 on the other side of Sam's when you left him --  
10 A. Uh-huh.  
11 Q. -- correct? Do you know where Officer  
12 Hodge was before you had physical contact with Mr.  
13 Owensby?  
14 A. Where he was responding from?  
15 Q. Yes.  
16 A. I believe he was waiting for us in  
17 Roselawn Park.  
18 Q. And Roselawn Park is how far away from  
19 Sam's Carry Out?  
20 A. 100 yards, 200 yards. Not a big distance  
21 at all. At the end of Sam's, that's where the park  
22 begins, so.  
23 Q. And Officer Hodge was in plain clothes or  
24 old clothes --

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1 A. Yes.  
2 Q. -- correct? Along with Officer Larson?  
3 A. Lawson.  
4 Q. Lawson?  
5 A. Yes.  
6 Q. Did someone request the Macing?  
7 A. I believe Officer Caton did.  
8 Q. What do you recall, if -- if you recall,  
9 what did he say?  
10 A. I don't remember it at the time, but it  
11 was referred to me by both Pat and the other people  
12 that were there, "Mace this mother fucker."  
13 Q. And Officer Hunter applied the Mace --  
14 A. Correct.  
15 Q. -- correct? How far was Officer Hunter  
16 from Mr. Owensby?  
17 A. I don't know.  
18 Q. Did you raise Mr. Owensby's head so that  
19 Officer Hunter could apply the Mace?  
20 A. I believe that was my statement at  
21 Internal, so I would have to say that was the most  
22 accurate recollection of it, yes.  
23 Q. Well, did you?  
24 A. I don't remember.

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1 Q. When you raised Officer -- I'm sorry.  
2 When you raised Mr. Owensby's head to be Maced, how  
3 did you do that?  
4 A. I really don't know. I don't know at what  
5 point that happened, and I can't fully recall how it  
6 was done, if it was done.  
7 Q. Where were you when the Mace was applied?  
8 A. In the same position I referred to you as  
9 earlier. I was laying on the left side.  
10 Q. Were you still kneeling on the shoulder?  
11 A. No.  
12 Q. Where were your -- were you in a kneeling  
13 position?  
14 A. I don't remember.  
15 Q. What did Officer Hodge do to assist in the  
16 arrest of Mr. Owensby?  
17 A. The exact things, I'm -- I don't really  
18 recall. You're going to have to ask Officer Hodge.  
19 I do know he was helping with the right arm to come  
20 over and handcuff him. Exactly what he did, I don't  
21 know.  
22 Q. Did he use a PR-24?  
23 A. Uh, incorrectly, yes.  
24 Q. Okay. But, I mean, there was a billy club



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1 or a PR-24 --

2 A. A PR-24 was --

3 Q. -- used in the arrest?

4 A. Yes.

5 Q. How -- to your recollection, how was it

6 used?

7 A. Well, when he first -- I don't know if

8 he -- where he got the PR-24, because he was in old

9 clothes and probably didn't have one with him. So

10 whose it was, I don't know.

11 He, from what I remember, was using it

12 incorrectly, and he was on top instead of

13 underneath. I took the PR-24 out of his hand and

14 slid it under the arm real quick so he could help

15 Pat bring the other hand over.

16 Q. Under the right arm?

17 A. Yes.

18 Q. So you're on the left-hand side, you reach

19 across, grab the PR-24, and insert it under the

20 right arm?

21 A. Yes.

22 Q. Is it inserted between the torso and the

23 elbow or from the outside through the elbow to the

24 torso?

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1 A. As I was handing it -- as I pulled the end

2 of it out and as I'm handing it back, I'm telling

3 him where to put it, how to put it, and I'm guiding

4 him through it.

5 Q. Did you position it or did he position it?

6 A. I did not position it.

7 Q. You did not?

8 A. No.

9 Q. What did you tell him to do?

10 A. What I just explained. It needs to go

11 under the arm and then on top of the tricep, not

12 vice versa. Otherwise, you have no -- well, I

13 didn't go through the long explanation of it. But

14 what I exactly said, I don't know.

15 Q. And -- and what did Officer Hodge do in

16 response?

17 A. He did exactly what I told him to do.

18 Q. So how did he place the PR-24?

19 A. From what I remember, under the right

20 forearm on top of the tricep, bicep area to apply

21 pressure/counterpressure to bring the arm completely

22 up for handcuffing.

23 Q. The bicep of Mr. Owensby is laying on the

24 ground, on the asphalt, right?

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1 A. Or up in the air. I don't know if it was

2 exactly on the ground. Remember that we're --

3 Q. It was the bottom side of the arm --

4 A. -- tussling a little bit.

5 Q. In this case?

6 A. Yes.

7 Q. Because he's face down, right?

8 A. (Nodding head.)

9 Q. The PR-24 is inserted from the outside,

10 the side closest to the car?

11 A. To be honest with you, I'm getting

12 confused in my head. I'm not exactly sure how it

13 was put in, but all I remember is, it was being used

14 wrong. I explained to him the proper way to put it

15 in as we were sitting there, and he got it up.

16 (Plaintiffs' Exhibit 10  
was marked for identi-

17 fication.)

18 Q. Let me give you what's marked as

19 Exhibit 10. It's a generic sketch of the back of a

20 human body.

21 Place for me or draw where the PR-27 was

22 inserted. And you can use that just by a straight

23 line or draw a PR-27, however you want -- or 24, I'm

24 sorry. PR-24. However you want to do that.

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1 A. I'm not going to be able to.

2 Q. Why not?

3 A. Well, keep in mind, this is an

4 ever-evolving, ever-changing situation. Body parts

5 are moving. In a perfect world I could design you

6 exactly how a PR-24 needs to be used. However, if

7 Mr. Owensby is struggling with Officer Hodge at this

8 time, I'm trying to hold on to the left arm so I

9 don't lose control of it, and I'm trying to explain

10 to somebody how to put the arm in as it's bending

11 and moving and weaving. I am giving Officer Hodge,

12 telling him as fast as I possibly can, how to use

13 this implement as the situation is changing.

14 Exactly what was said, I don't remember, because,

15 again, it's constantly changing and moving and what

16 have you. You're going to have to ask Officer Hodge

17 how he did it, because I don't remember.

18 Q. I will. I will ask --

19 A. Okay.

20 Q. -- Officer Hodge.

21 A. I don't remember.

22 Q. My question is, from what you saw, where

23 was the PR-24 inserted?

24 A. Like I said, over one area, under the

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1 A. I don't remember.  
2 Q. What about Officer Hunter?  
3 A. I don't remember what he did.  
4 Q. Is it fair to say that all of these --  
5 that the -- these five officers, you, Officer Caton,  
6 Officer Hodge, Officer Hunter and Officer Sellers  
7 worked together in arresting Mr. Owensby?  
8 A. Uh, not Webster, but it sounds like a  
9 reasonable summation.  
10 Q. Would you describe it as a team effort?  
11 A. I guess.  
12 Q. On the -- on that evening -- earlier that  
13 evening, when you originally responded to Officer  
14 Hasse and Sellers' car and there was a suspect in  
15 the back seat, do you know why the suspect in the  
16 back seat had been arrested?  
17 A. Had to have been for a minor misdemeanor.  
18 That's what they were missing was the minor  
19 misdemeanor payout citation.  
20 Q. Did you know what it was?  
21 A. No.  
22 Q. Did you ever talk to that person?  
23 A. I don't remember if I did or not.  
24 Q. Do you recall whether or not the person

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1 was arrested for marijuana possession?  
2 A. Sounds familiar, but the exact arrest, I  
3 don't know.  
4 Q. Do you have any idea of how much marijuana  
5 the person had on him?  
6 A. Nope.  
7 Q. Do you know who the person was that was  
8 arrested?  
9 A. (shaking head).  
10 Q. No?  
11 A. No.  
12 MR. MARTINS: Why don't we take our break  
13 now.  
14 VIDEOGRAPHER: Off the record. The time  
15 is 1:55. We're changing to videotape number 3.  
16 (Lunch recess.)  
17 VIDEOGRAPHER: Time is 2:43 and we're back  
18 on the record. This is videotape number 3.  
19 BY MR. MARTINS:  
20 Q. Sir, when we were -- before we took the  
21 lunch break, we were at the point where Mr. Owensby  
22 had been handcuffed. What happened after that?  
23 A. Officer Caton -- it was basically time to  
24 get Mr. Owensby from the ground to the police car.

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1 At that point more cops started showing up. Golf  
2 Manor was the closest vehicle to us. They were  
3 asked if we could put Mr. Owensby in the back of  
4 their police car, being the closest one to us. So  
5 Officer Caton goes back down, attempts to pick Mr.  
6 Owensby up by his pants, if I can remember  
7 correctly. And with the spandex in them or whatever  
8 elastic it was, it stretched and he didn't come up  
9 off the ground.  
10 Q. At this point in time was Mr. Owensby  
11 moving?  
12 A. Yes.  
13 Q. How so?  
14 A. Pretty much the typical person after  
15 they've been Maced, kind of wincing the eyes and  
16 trying to roll to their side. Typical response that  
17 we've had.  
18 Q. Did you see this?  
19 A. Yes.  
20 Q. You personally saw him wincing his eyes?  
21 A. Yes, because he's rolling --  
22 Q. Or blinking --  
23 A. He's rolling up on --  
24 Q. -- blinking his eyes?

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1 A. Yes. He's slightly kind of going on his  
2 side, wincing the eyes. The typical response we  
3 have with the --  
4 Q. So then, you also saw that his head was  
5 cut?  
6 A. I saw a light bit of blood there, yes.  
7 Q. You-- all right.  
8 A. Kind of a road rash scenario.  
9 Q. Where was he cut?  
10 A. From what I saw, it looked like over the  
11 left temple -- or not temple, temple's over here.  
12 Left eyebrow.  
13 Q. What about on the right side of the face?  
14 A. Didn't see anything there.  
15 Q. Did you notice any other cuts on him?  
16 A. Not at that time, no.  
17 Q. So you knew, at least at that point in  
18 time, that Mr. Owensby had been Maced, and you knew  
19 that he had been injured and that he had a cut on  
20 his head, correct?  
21 A. A minor one, yes.  
22 Q. Did you do anything to administer any type  
23 of first aid?  
24 A. Not at that time, no.

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1 officers -- when you have a subject that's still  
2 resisting, not that violent anymore, but yet still  
3 resisting and not cooperating, get them to the  
4 closest car you can. And the closest car we had was  
5 an undercover unit, didn't have a cage in the back  
6 of the car. So Golf Manor was there, we put him  
7 there.  
8 **Q. And you got permission from Golf Manor to**  
9 **do that?**  
10 A. Yes.  
11 **Q. Who actually asked the Golf Manor officer**  
12 **for permission?**  
13 A. I remember asking them, "Can we put him in  
14 your car?" And from, again, from what I've heard,  
15 other officers asked also. I don't remember which  
16 ones they were.  
17 **Q. And do you recall the response that you**  
18 **got?**  
19 A. Something to the effect of, sure, go  
20 ahead.  
21 THE REPORTER: Pardon me?  
22 THE WITNESS: Sure, go ahead.  
23 **Q. And the officer you talked to from Golf**  
24 **Manor was Officer Robert Heiland?**

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1 A. I don't know his name.  
2 **Q. You don't know?**  
3 A. I don't know his name.  
4 **Q. Did you -- when you went to retrieve your**  
5 **PR-24 and handcuffs, I take it then you turned your**  
6 **back on the officers that were taking Mr. Owensby to**  
7 **the Golf Manor cruiser; is that correct?**  
8 A. Yes.  
9 **Q. So you did not see the actual transport of**  
10 **Mr. Owensby to the cruiser?**  
11 A. Correct.  
12 **Q. When you asked -- strike that.**  
13 **The marijuana that you believe you felt in**  
14 **Mr. Owensby's pocket, that would have been a minor**  
15 **misdemeanor?**  
16 A. Uh-huh.  
17 **Q. Correct?**  
18 A. To my assumption at that point, yes.  
19 **Q. Okay. If -- if it was, in fact, marijuana**  
20 **it would have been a minor misdemeanor to your**  
21 **understanding, correct?**  
22 A. Yes.  
23 **Q. And a minor misdemeanor you don't arrest**  
24 **on, correct?**

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1 A. Hmm. Now you're getting into legal  
2 technicalities. Yes, it's still considered an  
3 arrest. What do you mean "you don't arrest on"?  
4 **Q. You don't handcuff.**  
5 A. Well, depends on the person.  
6 **Q. Well, in this situation, for Mr. Owensby,**  
7 **if you knew that he had marijuana, that amount that**  
8 **you had felt, your practice would not have been to**  
9 **handcuff him; is that correct?**  
10 A. Dealing in hypotheticals, it's hard to  
11 actually answer that question.  
12 **Q. Well, do you recall telling the IIS that**  
13 **the marijuana possession would have been a minor**  
14 **misdemeanor and that you would not have handcuffed**  
15 **him?**  
16 A. Again, I don't quite understand where  
17 you're going with the questioning. The fact that he  
18 had the marijuana on him and was a minor misdemeanor  
19 wasn't the priority at the time. You're looking at  
20 a felony assault on a police officer. Marijuana, I  
21 could pretty much care less about at that time. I  
22 never got a chance to go further with it because of  
23 what happened shortly thereafter when he was IDed.  
24 Now, just a normal person on the street that we

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1 would have encountered, no, he probably wouldn't  
2 have been handcuffed.  
3 **Q. So he would have been given a citation and**  
4 **that would be the end of it?**  
5 A. Pretty much.  
6 **Q. At any time do you recall Mr. Owensby**  
7 **kicking?**  
8 A. Yes.  
9 **Q. When -- when was he kicking?**  
10 A. I felt the lower part of his body moving  
11 in the beginning of the situation when we were first  
12 on the ground and I was on my back. Of course, I --  
13 I was able to turn him over fairly quickly. And as  
14 I am trying to scoot around to the side of him, he  
15 is still trying to get up. So, yes. After that, I  
16 don't recall him much kicking after that, no.  
17 **Q. With respect to the initial time when you**  
18 **fell to the ground, after you tackled him and you**  
19 **fell to the ground on your back, him on top of you,**  
20 **am I correct in understanding that it was almost**  
21 **instantaneous, as you hit the ground, you flipped**  
22 **him over so that he was face down on the asphalt and**  
23 **you were on top of him?**  
24 A. Yes.

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1 Q. All right. And as to the second time when  
2 you were on him and to his left, you say you felt  
3 him kicking. Would it be his right leg or left leg?  
4 A. I couldn't tell you which one it was. I  
5 could feel the sensation, but I wasn't extremely  
6 concentrating on watching what he was doing down  
7 there.  
8 Q. Do you know whether or not he was kicking  
9 from -- since he's facing the ground and has his  
10 arms underneath him, is he kicking with his leg  
11 being raised from the hip or bending his knee back  
12 and kicking?  
13 A. I don't know.  
14 Q. You testified -- or not testified, I'm  
15 sorry. You stated in the IIS investigation that Mr.  
16 Owensby, at one point, was using his head as a point  
17 of, I guess, contact to try and raise himself. Do  
18 you recall that?  
19 A. Not really, no.  
20 Q. Did Mr. Owensby, while you were on top of  
21 him, did Mr. Owensby try to get up?  
22 A. Define "try to get up."  
23 Q. Try to raise himself off of the ground,  
24 off of the asphalt?

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1 A. From what I can remember, no. He was more  
2 intent on keeping his hands from being pulled out to  
3 be handcuffed.  
4 Q. Your -- when you were on top of Mr.  
5 Owensby, your right hand was trying to get his left  
6 arm out from under him, correct?  
7 A. Uh-huh.  
8 Q. And your left arm was around his head?  
9 A. No.  
10 Q. When did you put --  
11 A. When I realized I couldn't get his arm out  
12 from underneath him, that's when I disengaged and  
13 went to a different technique.  
14 Q. All right. Before disengaging, where was  
15 your left arm?  
16 A. Still underneath him, trying to pull the  
17 bottom part of his bicep.  
18 Q. So you finally -- you -- you get your --  
19 your left arm out, and then is that when you bring  
20 your left arm around to his head?  
21 A. Not exactly. Yes, in theory, but not  
22 exactly. As I'm pulling on the bicep, tricep, elbow  
23 trying to get his arm out, I realize it's not  
24 coming, I need to go to something else. And that's

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1 when I disengage, let go, change my body position  
2 and then wrapped his head to perform the mandibular  
3 angle.  
4 Q. When you were tugging on his left arm to  
5 try and get it out from under him, were you laying  
6 on top of him?  
7 A. No.  
8 Q. Where were you?  
9 A. On his -- if I can go back to --  
10 Q. Sure.  
11 A. -- the exhibit of -- the drawing. Kind of  
12 a rough -- as I'm trying to -- keep in mind the arm  
13 is not flat like this, it's kind of -- the elbow is  
14 coming out this way (indicating).  
15 I'm -- if I remember correctly, I was on  
16 one knee trying to pull and trying to use my body  
17 weight and leverage to pull that out. And when that  
18 didn't work, that's when I repositioned myself to  
19 perform the other maneuver.  
20 Q. At -- at the time that you were doing  
21 this, when you say you were on one knee, was the --  
22 the down knee, if you will, was that on Mr. Owensby?  
23 A. No.  
24 Q. It was on the asphalt?

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1 A. On the asphalt.  
2 Q. At that point then, after that, you go to  
3 the -- to placing your left arm around Mr. Owensby's  
4 head?  
5 A. Around the forehead, yes.  
6 Q. And which knee do you place on his  
7 shoulder?  
8 A. I didn't.  
9 Q. At that point?  
10 A. At that point I did not.  
11 Q. Where are your knees at that point?  
12 A. They're -- I'm pretty much laying down at  
13 that point.  
14 Q. Laying on top of him?  
15 A. Laying next to him. The only part of me  
16 that would have been touching him would have been my  
17 right shoulder and top part of my chest reaching  
18 across him to manipulate the mandibular angle.  
19 Q. So your right shoulder is on Mr. Owensby's  
20 left shoulder; is that right? Correct?  
21 A. Yes.  
22 Q. And your left arm is now coming around to  
23 Mr. Owensby's head?  
24 A. Correct.

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1 police procedures?

2 A. It would have been if that would have  
3 happened. I was not there. I did not see that. I  
4 told Dave Hunter if he saw something like that, he  
5 should have reported it. Dave never did. And  
6 regardless of any, quote/unquote --

7 Q. Sorry. Go ahead.

8 MR. HARDIN: Are you finished? Yeah.

9 A. One of the things that Pat and I prided  
10 ourselves on is we don't believe in street justice.  
11 There's no such thing. It does not apply to us.

12 For Pat to do something like that in the  
13 back seat of a car would have been totally out of  
14 Pat's character. The best way to get an explanation  
15 of what happened back there is to ask Officer Caton.  
16 I did not see it. I did not see if it happened or  
17 if it did happen. I don't know.

18 By the time I got there, as I said, he was  
19 closing the door and walking away. I advised  
20 Officer Hunter, "If you saw Pat do something, then  
21 you need to report it," and he never did.

22 Q. But there was street justice administered  
23 on the night of November 7th, 2000, wasn't there?

24 MR. HARDIN: Objection.

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1 You may answer.

2 THE WITNESS: I'm sorry, what did you say?

3 MR. MARTINS: You may answer.

4 MR. HARDIN: Objection, but you may  
5 answer.

6 A. No.

7 Q. Isn't it true that on the night of  
8 November 7, 2000, you were indignant that this man  
9 had the, in your words, "balls" to walk past you and  
10 the other officers and the cruisers when you  
11 believed that he was the person that fled from  
12 Officer Hunter several weeks earlier; isn't that  
13 true?

14 A. Not really.

15 Q. Isn't it true that you, Officer Caton, and  
16 Officer Hunter then followed this person to the  
17 convenience store with the idea of getting back at  
18 this guy so that he would never run from you again?

19 A. No.

20 Q. Isn't it true that when you took him down  
21 that you applied a hold to him and that you knelt on  
22 his back to raise his head up so that he could be  
23 Maced by Officer Hunter?

24 A. No.

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1 Q. Isn't it true that Officer Caton beat this  
2 man in the back and in the arms with a closed fist  
3 before and after he was handcuffed?

4 A. No.

5 Q. Isn't it true that when he was picked up,  
6 he was near unconsciousness and could not walk?

7 A. No.

8 Q. Isn't it true that the reason he was  
9 placed in the Golf Manor cruiser was because he  
10 could not walk and the officers didn't want to carry  
11 him back to the Cincinnati cruiser, and so they  
12 looked for the fastest and easiest place to place  
13 him, and that was the Golf Manor cruiser?

14 A. No.

15 Q. Isn't it true that Officer Hunter --  
16 Officer Caton then beat this man when he was placed  
17 in the cruiser, Maced and handcuffed?

18 A. No.

19 Q. Isn't it true that neither you nor any of  
20 the other officers provided required medical  
21 assistance to this officer -- to this victim while  
22 he was in the back seat of the cruiser, despite the  
23 fact that all of you knew he was cut, he was  
24 bleeding, he had been Maced; isn't that true?

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1 A. Yes.

2 Q. Who was responsible, out of the five  
3 officers, Jorg, Caton, Hunter, Hodge, Sellers, who  
4 was responsible for the arrest of Roger Owensby Jr.  
5 on the evening of November 7, 2000?

6 A. Officer David Hunter.

7 Q. Why?

8 A. It was his arrest. He was the one that  
9 got run from. He was the one that made the  
10 accusations of the situation that happened that no  
11 one else saw. He was the one that identified Roger  
12 Owensby. He was the one, from my understanding,  
13 Off-- asked Officer Caton to go with him over to the  
14 store. He was the one that identified him. It was  
15 his arrest.

16 Q. You were the person that made the contact  
17 with Mr. Owensby, correct?

18 A. Yes.

19 Q. You were the person that patted him down,  
20 correct?

21 A. Yes.

22 Q. You were the one that attempted to  
23 handcuff him, correct?

24 A. Yes.

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1 Q. And who actually fastened the handcuffs on  
2 Mr. Owensby?  
3 A. I believe it was Officer Caton.  
4 (Plaintiffs' Exhibit 13  
5 was marked for identi-  
6 fication.)  
7 Q. Let me show you what is marked as  
8 Exhibit 13. 13. This is your handwriting?  
9 A. Yes.  
10 Q. It's entitled Police Officer's Notes.  
11 A. Yes.  
12 Q. What is the purpose of this?  
13 A. If I remember correctly, any time you  
14 either transport or have a situation involved in a  
15 critical incident, whether law enforcement side or a  
16 regular homicide, or -- of that situation, and you  
17 go to CIS, like I said, to either drop somebody off  
18 or whether you're involved, you have to fill one of  
19 these forms out.  
20 Q. Who did you give this form to?  
21 A. I don't remember which investigator it  
22 was.  
23 Q. When did you prepare this form?  
24 A. The night of the incident.  
Q. The night of November 7th?

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1 A. Yes.  
2 Q. Where were you when you prepared it?  
3 A. At CIS.  
4 Q. And you wrote out that, "I was the contact  
5 officer in regards to the stop. After fire  
6 responded I was advised to separate from any other  
7 officer so I returned to my patrol car."  
8 A. Yes.  
9 Q. As a contact officer did you believe that  
10 you had any responsibility for the well-being of Mr.  
11 Owensby?  
12 A. Contact officer is kind of a loose term in  
13 regards to a technique that is used in law  
14 enforcement.  
15 Q. As the contact officer, did you believe  
16 that you had any responsibility for the well-being  
17 of Mr. Owensby?  
18 A. No.  
19 Q. As an officer involved in the arrest of  
20 Mr. Owensby, did you believe that you had any  
21 responsibility for the well-being of Mr. Owensby?  
22 A. Per our sergeants, when involved in a  
23 situation of this nature, we are not to have any  
24 further contact with the subject. The officers

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1 responding on the scene are to take over. So, no.  
2 Q. I'm asking about before Sergeant Watts  
3 opened the door to the Golf Manor cruiser. As an  
4 officer involved in the arrest of Mr. Owensby, did  
5 you believe that you had a responsibility for the  
6 well-being of Mr. Owensby?  
7 A. It's not an easy yes-or-no answer. I'll  
8 clarify that first. Yes, in a normal situation. In  
9 this situation, when use has been forced -- use --  
10 force has been used, the officers involved, whether  
11 you use force or not, are to not have any further  
12 contact with the arrested until you're down  
13 processing paperwork. That's just the policy that's  
14 been in -- set in the police division.  
15 Q. What I'm asking about is, before any of  
16 the officers arrive, any of the sergeants,  
17 supervisors, arise -- arrive on the scene, you have  
18 a person who you know is bleeding, you know has been  
19 Maced, has been involved, even by your account, in a  
20 severe struggle with five police officers and has  
21 been placed in the back seat of a Golf Manor  
22 cruiser, do you believe, as one of the officers  
23 involved in that arrest, that you had a  
24 responsibility for the well-being of that person?

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1 A. No.  
2 Q. Do you believe that Officer Caton had a  
3 responsibility for the well-being of that person?  
4 A. No.  
5 Q. Do you believe Officer Hunter had a  
6 responsibility for the well-being of that person?  
7 A. No.  
8 Q. Do you believe Officer Sellers had a  
9 responsibility for the well-being of that person?  
10 A. No.  
11 Q. Do you believe Officer Hodge had a  
12 responsibility for the well-being of that person?  
13 A. No.  
14 Q. Is it your testimony that no Cincinnati  
15 police officer had a responsibility for the  
16 well-being of Roger Owensby while he was in the back  
17 seat of the Golf Manor cruiser?  
18 A. That's not what I said.  
19 Q. What is your testimony? Who, if anyone,  
20 was responsible for the well-being of Roger Owensby  
21 while he sat -- I take that back -- while he was in  
22 the back seat of the Golf Manor cruiser, bleeding  
23 and having been Maced?  
24 A. The first person that should have had

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1 responsibility is whose car that was, and that would  
2 have been the Golf Manor Police Officer. Secondly,  
3 any officer that was responding to the scene due to  
4 an assistance run should have taken a responsibility  
5 to make sure that things were done. Like I said,  
6 I've been --

7 Q. I'm asking, before.

8 MR. HARDIN: Objection. He's not finished  
9 with his answer yet.

10 MR. MARTINS: Well, just to clarify, I'm  
11 asking -- I'm asking, before the sergeants --

12 MR. HARDIN: Now, wait a minute. I want  
13 him to finish.

14 MR. MARTINS: Okay. All right.

15 MR. HARDIN: I want him to finish his  
16 answer.

17 MR. MARTINS: All right.

18 BY MR. MARTINS:

19 Q. I'm asking, though, before any sergeants  
20 respond. You can -- you can finish your answer.

21 A. At that point I've done this job quite a  
22 while and I know what the sergeants are going to do.  
23 I know how the sergeants want us to respond.

24 The officers that are involved in any use

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1 of force or an injury to a prisoner are not to have  
2 contact with the arrested until you're down at the  
3 justice center. That was the policy that was in  
4 place by our supervisors. Officers responding to  
5 the scene, Abe Lawson, people that were not involved  
6 but were there, were responsible and should have  
7 given care and aid.

8 Q. Such as Officer Brazile?

9 A. Yes.

10 Q. Officer Larson?

11 A. Lawson.

12 Q. Lawson? Is that right?

13 A. Yes.

14 Q. Is it your testimony that if you and  
15 Officer Caton were involved in an altercation with a  
16 suspect, and one of you or both of you shot the  
17 suspect, that neither one of you could administer  
18 aid to the suspect until the sergeants arrived? Is  
19 that your testimony?

20 A. That's not what I said.

21 Q. What would you do in that circumstance?

22 MR. HARDIN: Objection.

23 You may answer.

24 A. Well, again, dealing in hypotheticals, it's

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1 hard to give an exact clear answer. It depends on  
2 the response time of other officers. I've been  
3 involved in a shooting. Unfortunately, in this  
4 situation, of which I really don't want to get  
5 into -- when involved in a shooting, I have seen  
6 officers wait until other officers have responded  
7 for safety reasons. You don't know if the suspect  
8 is down or if they're still alive, if they have  
9 another weapon.

10 It is better to wait until the other  
11 officers respond. So yes, we would probably wait  
12 behind cover, concealment and wait until other  
13 officers respond.

14 Q. But in this case there was no chance of  
15 any harm to any officer in administering aid to Mr.  
16 Owensby. He was handcuffed, he had been Maced, he's  
17 in the back seat of a cruiser; is that correct?

18 A. That's correct. That's the position he  
19 was in.

20 Q. All right. And is it your testimony that  
21 given the facts of this situation, you still believe  
22 that you and the other officers, the other four  
23 officers involved in the arrest of Mr. Owensby, were  
24 not to provide care and aid to Mr. Owensby?

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1 A. We had other officers on the scene --

2 Q. Now, that's not the question.

3 A. They were --

4 Q. That's not the question.

5 A. -- they should have responded in giving  
6 the care.

7 Q. That's not the question. I'm asking  
8 whether or not you and the other four officers  
9 involved in the arrest, who had the best knowledge  
10 of the injuries suffered by Mr. Owensby, whether or  
11 not any of you had a responsibility to provide care  
12 to Mr. Owensby before the sergeants arrived?

13 MR. HARDIN: Objection to the form of the  
14 question.

15 You may answer.

16 A. Correct.

17 MR. MARTINS: Read back the question,  
18 please.

19 (Record read.)

20 Q. And your answer is?

21 MR. HARDIN: There will be an objection  
22 again, same objection.

23 A. The responsibility of the duty of care  
24 should not necessarily be handled by the officers

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1 involved, but the officers that respond to the scene  
2 well before the sergeants get there.  
3 Q. Did you ask any of the other officers who  
4 responded to the scene to provide care and medical  
5 attention to Mr. Owensby?  
6 A. No, I did not.  
7 Q. To your knowledge, did Officer Caton ask  
8 any of the other officers responding to the scene to  
9 provide medical care to Mr. Owensby?  
10 A. I don't know if he did or not.  
11 Q. To your knowledge, did Officer Hodge ask  
12 any of the officers responding to the scene to  
13 provide medical care to Mr. Owensby?  
14 A. I don't know if he did or not.  
15 Q. To your knowledge, did Officer Sellers ask  
16 any of the officers responding to the scene to  
17 provide medical care to Mr. Owensby?  
18 A. I don't know.  
19 Q. To your knowledge did Officer Hunter ask  
20 any of the officers responding to the scene to  
21 provide medical care to Mr. Owensby?  
22 A. I don't know.  
23 Q. Do you undergo any training as to the  
24 Cincinnati procedures, rules, and regulations?

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1 A. How do you mean?  
2 Q. Any training? Does anybody make you aware  
3 of the Cincinnati Police Department rules and  
4 regulations?  
5 A. If I remember correctly, when new  
6 procedures came out, they have them in the staff  
7 notes, and every officer gets a copy of the new  
8 updated procedures.  
9 Q. How about the manuals?  
10 A. Probably the same way --  
11 Q. Same way?  
12 A. -- from what I can remember.  
13 Q. Do they cover that at the police academy  
14 when you are studying to become a police officer?  
15 A. Briefly, yes.  
16 Q. Did you cover in the police academy the  
17 use of force and the rules and regulations and  
18 manuals applicable to the use of force?  
19 A. Yes.  
20 Q. Did you study, after the police academy,  
21 the Cincinnati Police Department manual and  
22 procedures relating to the use of force?  
23 A. I don't remember if I did or not, other  
24 than an updating or in-service classes.

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1 Q. Well, do you recall any updating or  
2 in-service classes with regard to Cincinnati Police  
3 procedures and manuals concerning the use of force?  
4 A. That was usually covered in in-service  
5 training, yes.  
6 Q. And do you have a recollection of that?  
7 A. Not specifically, no.  
8 Q. It had been some four to five years since  
9 you had graduated from the police academy, correct?  
10 Four years since you graduated from the police  
11 academy?  
12 A. For --  
13 Q. You graduated from the police academy in  
14 '96?  
15 A. '96.  
16 Q. All right then. So now it's November of  
17 2000, correct?  
18 A. Right. So it would be what, four and a  
19 half years or so.  
20 Q. Okay. In that four and a half years do  
21 you have any recollection of having classes on the  
22 use of force and the manuals and regulations  
23 concerning the use of force?  
24 A. I remember that we did have classes. The

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1 exacts, I am not sure of.  
2 Q. Okay. You remember that there were  
3 classes?  
4 A. Yes.  
5 Q. Do you remember that there were classes  
6 covering this subject?  
7 A. Yes.  
8 Q. That is, the use of force?  
9 A. Yes.  
10 Q. Do you recall attending classes on the  
11 care of, medical assistance for injured suspects in  
12 your custody?  
13 A. Not specifically.  
14 Q. Do you know if the City of Cincinnati has  
15 a policy concerning the use of cheek -- chokeholds?  
16 A. Yes.  
17 Q. What is the policy?  
18 A. They are not to be used under a deadly  
19 force encounter, and they are not to be used to  
20 recover drugs from a suspect's mouth, or something  
21 to that effect.  
22 Q. Define for me what a chokehold is.  
23 A. I chokehold would be restricting the  
24 airflow and the throat to prevent the swallowing of



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1 question again. I'm sorry.

2 Q. Sure. The sentence says "Arresting  
3 officers must maintain control of prisoners until  
4 relieved by a supervisor, Hamilton County Sheriff,  
5 or other law enforcement agency." Do you see that?

6 A. Uh-huh.

7 Q. Okay. And what I'm asking is, who  
8 relieved you and the other arresting officers of  
9 control over the prisoner, being Mr. Owensby, on the  
10 night of November 7, 2000?

11 A. Well, there were five officers involved,  
12 and everybody's trying to do their part. If I'm not  
13 taking the subject to the vehicle because I am  
14 trying to recover property so it's not taken from  
15 me, I relieved myself to secure my property.

16 When -- by the time I turn around, he's  
17 secured. Even though I'm one of those officers,  
18 from what I remember -- I don't remember who all was  
19 at that police car. The way we were instructed, it  
20 first goes down to whose arrest it was, which would  
21 have been Officer Hunter's.

22 Then he gets put into a Golf Manor car.  
23 The care, custody, and control, from my  
24 understanding, goes to the officer whose vehicle it

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1 is. I know --

2 Q. The Golf Manor Officer?

3 A. Yes. I know what this says. But in  
4 answer to your question, who relieved me from  
5 responsibility, quote/unquote, would have been  
6 myself, because I had other responsibilities there.

7 I did not think at the time Mr. Owensby  
8 was in that much distress or in need of immediate  
9 care. Chemical irritant affects people in different  
10 ways. I advise you he had blood on his head, minor.  
11 He did not seem to be in severe medical distress.

12 And it also says: Once the scene is  
13 stabilized. I didn't know what else we had going  
14 on. Like I said, we got so many things going on at  
15 one time.

16 So who relieved my authority? At that  
17 time it was myself. And then as soon as Sergeant  
18 Watts shows up, I start informing him of exactly  
19 what started to progress. Dave Hunter starts to  
20 proceed. And before we can get the entire story  
21 done, he goes, "Hold on guys. Let's go check on him  
22 and see what he has to say and find out who he is."

23 Who pulled myself out? I did. Who's  
24 responsible? I guess we all are. Every officer

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1 that was there. Every officer that's not even a  
2 Cincinnati police officer, if that answers your  
3 question.

4 Q. Okay. In your opinion, was the scene  
5 stabilized once Mr. Owensby was handcuffed?

6 A. Not right away.

7 Q. Was the scene stabilized when Mr. Owensby  
8 was placed in the back seat of the Golf Manor  
9 cruiser?

10 A. No, because I still had property that was  
11 outstanding.

12 Q. So the retrieval -- well, but you  
13 retrieved your property while they were taking him  
14 to the cruiser, right?

15 A. Oh, that's right. I'm sorry. I'm sorry.  
16 Correct. Correct.

17 Q. Okay. So once he placed in the back of  
18 the cruiser, you turn around -- you've retrieved  
19 your property, you turn around and you see Officer  
20 Caton closing the back --

21 A. Closing the door.

22 Q. -- driver's door of the Golf Manor  
23 cruiser, correct?

24 A. Uh-huh.

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1 Q. At that point in time is the scene  
2 stabilized?

3 A. Not necessarily. He's in a different  
4 department's police car. We've got cars still  
5 responding we have to disregard. We have  
6 supervisors we need to talk to. We have to get our  
7 cars over to the scene to transport Mr. Owensby from  
8 the Golf Manor car to our car, so we can relieve the  
9 Golf Manor's cars, thank them for coming, and send  
10 them on the way.

11 No, the scene is not, quote/unquote,  
12 stabilized. The way it was referred to me, the  
13 scene is not stabilized until you're in your car and  
14 either on your way to the station, on the way to the  
15 hospital, on the way to the jail, on the way to  
16 whatever. That's when the scene is stabilized.

17 Q. Go to the next page, page 3, subparagraph  
18 A2. It says, "When necessary, handcuff physically  
19 handicapped, injured, or pregnant prisoners in  
20 front."

21 A. I'm sorry, I'm missing where you're at.

22 Q. Page 3.

23 A. Page 3.

24 Q. A. 2.

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1 A. Oh, I'm sorry.  
2 Q. Do you have that?  
3 A. Yes.  
4 Q. Do you see, it says "When necessary,  
5 handcuff physically handicapped, injured, or  
6 pregnant prisoners in front." Mr. Owensby was never  
7 handcuffed in front, correct?  
8 A. Correct.  
9 Q. And did you think that because of the  
10 injuries that he had that there was any need to  
11 handcuff him in front?  
12 A. No.  
13 Q. Right under paragraph 2 is a subparagraph  
14 a., and it says, "Two officers will transport a  
15 prisoner handcuffed in front of the body." Again,  
16 there were no two officers to transport Mr. Owensby,  
17 correct?  
18 A. Well, no, we didn't have everything  
19 stabilized yet. We never got to that point.  
20 Q. Were you present when Mr. Owensby was  
21 taken out of the Golf Manor cruiser?  
22 A. Yes.  
23 Q. Were you present when Officer Hasse and  
24 Officer Caton attempted to administer CPR --

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1 A. Yes.  
2 Q. -- to Mr. Owensby? At that time Mr.  
3 Owensby -- Officer Caton and Officer Hasse left the  
4 handcuffs on Mr. Owensby; is that right?  
5 A. I don't remember if they did or not.  
6 Q. Isn't it true -- were you there when the  
7 EMS, the fire, I guess it was Golf Manor fire  
8 people, showed up on the scene?  
9 A. I was obviously there, but I don't think I  
10 was at the actual scene, I don't think.  
11 Q. Do you recall seeing that when the fire  
12 and EMS people showed up on the scene, they  
13 instructed the handcuffs to be removed from Mr.  
14 Owensby?  
15 A. I remember hearing that after the fact,  
16 but I don't remember it from that night.  
17 Q. Seeing that. You don't remember seeing  
18 that?  
19 A. No.  
20 Q. In the time that you were at the scene on  
21 November 7, 2000, are you aware of anyone searching  
22 Mr. Owensby's person, other than the pat-down search  
23 that you conducted?  
24 A. None other than what happened in the

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1 hospital, and I wasn't privileged to that. I know  
2 property was recovered, but I don't know who did it  
3 or when.  
4 Q. Do you know -- okay. That was going to be  
5 my next question. Do you know who recovered  
6 property at the hospital?  
7 A. No.  
8 Q. Obviously, you were not present?  
9 A. Correct.  
10 Q. If you look at page 9, you see that at the  
11 bottom of the page is a section beginning D.  
12 Transporting Prisoners. See that?  
13 A. Uh-huh.  
14 MR. HARDIN: Say yes.  
15 A. I'm sorry, yes.  
16 Q. Okay. And then there are a number of  
17 different headings continuing on to page 10. And on  
18 number 4 it says, "Two officers will transport  
19 prisoners on stretchers. The second officer will  
20 ride in the rear to monitor the prisoner and to give  
21 or summon medical aid if necessary." Do you see  
22 that?  
23 A. Yes.  
24 Q. Now, Mr. Owensby was not on a stretcher in

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1 the back seat of the cruiser, correct?  
2 A. Correct.  
3 Q. If we go to the next paragraph on page 11  
4 at the top it says, "Whenever possible, officers  
5 will place the prisoner on their back to avoid  
6 positional asphyxiation and/or cocaine psychosis."  
7 Do you recall whether or not you made any inquiry as  
8 to how Mr. Owensby was positioned in the back seat  
9 of the Golf Manor cruiser?  
10 A. Not that night. Only when it became  
11 important to find out for the defense of my trial.  
12 Q. Yeah. No. I'm -- I'm just asking on the  
13 night of November 7th.  
14 A. No.  
15 Q. Okay. Did you -- did you ever see Mr.  
16 Owensby in the back seat of the cruiser, how he was  
17 positioned, other than when you walked up with  
18 officer Watts?  
19 A. No.  
20 Q. Do you see that paragraph 5 says, "Never  
21 leave prisoners unattended inside vehicles."?  
22 A. Uh huh. (Nodding head.)  
23 Q. Do you believe that Mr. Owensby was left  
24 unattended inside a vehicle?

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1 A. No.  
2 Q. Why not?  
3 A. Well, he had a Golf Manor Officer that was  
4 standing right at the driver's door of his car that  
5 Mr. Owensby was in. And then, per other people's  
6 statements, they were continually walking by the  
7 vehicle to see who it was or what was needed.  
8 Q. Do you own any property?  
9 A. Yes.  
10 Q. What property do you own?  
11 A. Meaning land, personal property?  
12 Q. Real property. I'm sorry.  
13 A. Wheel property?  
14 Q. Real property. Land. Real estate.  
15 A. Yes.  
16 Q. What property do you own?  
17 A. I own 11 plus acres.  
18 Q. Is it developed or undeveloped land?  
19 A. Undeveloped.  
20 Q. Where is it located?  
21 MR. HARDIN: There's going to be an  
22 objection to the address, but the general  
23 location --  
24 MR. MARTINS: No, I'm not -- I'm sorry.

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1 MR. HARDIN: Okay.  
2 Q. Give me the county.  
3 A. Brown County.  
4 Q. Brown County, Ohio?  
5 A. Ohio.  
6 Q. Do you maintain an IRA or a 401(k)?  
7 A. No.  
8 Q. Do you own stocks or bonds?  
9 A. No.  
10 Q. Do you have a savings?  
11 A. No.  
12 Q. And I understand that you get disability  
13 income, presently?  
14 A. Yes. Unfortunately, it has not been  
15 decided the actual amount of what I'm going to be  
16 getting, so I don't know what that -- I haven't got  
17 my first check yet. All I have is health insurance,  
18 so far.  
19 Q. And that's something that some  
20 administrative agency will determine?  
21 A. And they haven't given me a time frame on  
22 when it's going to be answered.  
23 Q. Do you agree that on November 7th, 2000,  
24 when you approached Mr. Owensby and, thereafter,

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1 effectuated the arrest on Mr. Owensby, you were  
2 acting in your capacity as a Cincinnati police  
3 officer?  
4 A. Yes.  
5 Q. Do you agree that Mr. Owensby was  
6 physically seized on November 7, 2000, that is, his  
7 person was seized?  
8 A. Yeah, I guess that would be -- without  
9 exactly understanding where you're going, I guess  
10 that would be a fair statement.  
11 Q. In terms of a search and seizure, this was  
12 a seizure, right?  
13 A. Uh, no, it was an arrest. There's a  
14 difference.  
15 Q. In your mind, what's the difference?  
16 A. A seizure is something, you know, when we  
17 seize property, we stow it away in a particular  
18 room, depending on what it is, and no one's allowed  
19 to have access to it or something like that. If a  
20 person is seized, that would be after any type of  
21 court litigation when they would end up, be going to  
22 prison or jail or something of that nature.  
23 A seizure? I don't think it's a seizure.  
24 It's an arrest. His liberty to leave is taken away.

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1 But I -- I don't know if a seizure actually fits on  
2 that definition.  
3 Q. Okay. And you agree with me that a person  
4 should not arrest -- or an officer does not have  
5 authority to arrest someone unless either the  
6 officer has a warrant or the officer has probable  
7 cause, correct?  
8 A. I agree.  
9 Q. Do you believe that the -- first of all,  
10 you did not have a warrant for Mr. Owensby's arrest?  
11 A. That's correct.  
12 Q. Okay. So the arrest was based on probable  
13 cause?  
14 A. Yes.  
15 Q. And I think you've already answered this,  
16 but that was based on the indication by Officer  
17 Hunter that, "That's him"?  
18 A. Yes.  
19 Q. Was there any use of any informant in  
20 arriving at probable cause, in your mind?  
21 A. Not that I was aware of.  
22 Q. Was it your understanding that if you saw  
23 a fellow officer using excessive force, that you had  
24 a duty to step in and prevent that use of excessive

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1 force?  
2 A. Yes.  
3 Q. And if you could not prevent that use of  
4 excessive force, that you had a duty to report that  
5 use of excessive force?  
6 A. Yes.  
7 MR. MARTINS: Let's take a break.  
8 VIDEOGRAPHER: Off the record.  
9 (Recess taken: 4:41 p.m. - 4:46 p.m.)  
10 VIDEOGRAPHER: Back on the record, Mr.  
11 Martins.  
12 BY MR. MARTINS:  
13 Q. Sir, I want to ask you about the  
14 microphones, the mikes that the officers wear. When  
15 an officer wants to transmit, in this case, the call  
16 for assistance, it's referred to as keying the mike;  
17 is that right?  
18 A. Yes.  
19 Q. Would you explain to us what keying the  
20 mike is?  
21 A. Just what you said. When someone asks if  
22 you have your mike keyed up or check your mikes or  
23 something like that, it means actually depressing  
24 the button on your microphone or on your portable

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1 radio to a point where a transmission can be sent.  
2 Q. And once you release, you let go of the  
3 mike, then the transmission stops?  
4 A. I believe so. I'm not the technical  
5 wizard on that, but I believe that's how it works.  
6 I don't know if there's any overlap or not. I don't  
7 know.  
8 Q. So when -- so when you want to communicate  
9 with someone, the dispatcher or someone, and you  
10 must continue to depress the key on the mike in  
11 order to transmit, and when you're done you let go,  
12 and that disconnects the transmission?  
13 A. Yes.  
14 MR. MARTINS: Thank you, sir, I have no  
15 further questions.  
16 MS. LONGTIN: I have just a few.  
17 MR. MARTINS: Wait. You're going to need  
18 a mike.  
19 MS. LONGTIN: I've got one.  
20 MR. MARTINS: Oh, you have a mike? Okay.  
21 EXAMINATION  
22 BY MS. LONGTIN:  
23 Q. Mr. Jorg, my name is Lynne Longtin. I  
24 represent today the City of Golf Manor and Officers

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1 Stephen Tilley, Roby Heiland, and Chris Campbell. I  
2 know you've testified a long time today, and I'll  
3 try to be very brief. I don't have that many  
4 questions.  
5 I want to go back to what I believe you  
6 testified to earlier. You made a statement that you  
7 believed that the Golf Manor Officers had the first  
8 responsibility to check on Mr. Owensby after he was  
9 placed in the Golf Manor car. Is that correct?  
10 A. I don't know if those are exactly my  
11 words, but the gist, yes.  
12 Q. Okay. Can you define what you mean, for  
13 me, by the first responsibility?  
14 A. Being that we did not have a Cincinnati  
15 police car on that particular lot at that spot, we  
16 needed to secure Mr. Owensby. Being they had a  
17 police car, actually, I found out later, too, on the  
18 lot, the closest and easiest way to secure Mr.  
19 Owensby is to put him in the back of their vehicle.  
20 It then becomes part their responsibility,  
21 since he is in their vehicle, until we can go and  
22 retrieve our vehicle and bring it back and then  
23 transport so we can let them go, it is considered  
24 their responsibility since he is, Mr. Owensby, is

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1 then in their vehicle.  
2 Q. Okay. Maybe my question wasn't very  
3 clear. I guess what I mean by the "first" is, do  
4 you mean they had responsibility above and beyond  
5 the Cincinnati police officers at the scene?  
6 A. No, but he was at the vehicle the entire  
7 time. The prisoner is in the back seat of his car.  
8 It is his responsibility, being that it is his car.  
9 Not to totally exclude the Cincinnati police  
10 officers. That's not what I'm saying.  
11 Officer Caton's going to get the vehicle,  
12 the sergeant comes out, we're trying to do a lot of  
13 different things at one time, hoping that soon as  
14 Pat gets -- oh, I'm sorry -- Officer Caton gets back  
15 with the vehicle, we'll finish up talking with the  
16 boss. The boss will say, "Okay, transport him  
17 over." We'll check for injuries, do everything we  
18 need to do, and we can let Golf Manor go.  
19 Unfortunately, we never got to that point.  
20 Q. Okay. So you're not saying that they had  
21 the most responsibility on the scene?  
22 A. No, I'm not saying that.  
23 Q. But you're saying they had some  
24 responsibility on the scene?

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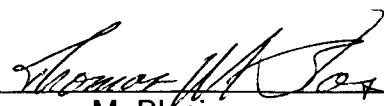
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STATE OF OHIO :  
: SS  
COUNTY OF HAMILTON :

I, Wendy Davies Welsh, Notary Public in and for the State of Ohio,  
do hereby state that the transcript of the deposition of  
Robert B. Jorg, deponent herein, having been submitted  
to said deponent for review and signature, has not been signed  
within the thirty (30) day period allowed under the Federal Rules; said  
deposition to now have the same force and effect as though signed.

  
Wendy Davies Welsh, Court Reporter

Sworn to before me this 5<sup>th</sup> day of January, 2004

  
Thomas M. Blasing  
Notary Public - State of Ohio  
My commission expires: May 4, 2004